

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4492 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

SHEKH REHMAN SHEKH KARIM

Versus

POLICE COMMISSIONER

Appearance:

Ms. Banna Dutta appointed amicus curie for Petitioner
Mr. Samir Dave, A.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 21/09/1999

ORAL JUDGEMENT

1. The petitioner-Shaikh Raheman Shaikh Karim has forwarded application through jail authorities to the High Court requesting to consider the legality, validity and propriety of the detention order dated 10-11-1998 passed against him by the respondent no.2-Police Commissioner, Surat in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Antisocial

Activities Act, 1985("PASA" for short).

It may be noted that the application forwarded by the petitioner through the jail authority has been treated as Spl.C.A. and was notified for admission vide order dated 25-6-1999. Rule was issued. However, when the matter was notified for final hearing, no legal aid was assigned to the petitioner, and as such, vide order dated 15th September, 1999 this Court appointed Advocate Ms. Banna Dutta as amicus curie to assist the Court for examining the complaints made by the petitioner to assail the impugned order.

2. Ms. Banna Dutta having gone through the papers have made submission on behalf of the petitioner while learned A.G.P. Mr. Samir Dave has made submission on behalf of the respondents nos.1.2 and 3.

3. The grounds of detention supplied to the petitioner under Sec.9(1) of "PASA" indicate that in all three criminal cases were filed against the petitioner at Salabatpura Police Station, Surat. The said cases are registered on 8-8-1998, 21-8-1998 and 3-9-1998. In all the three cases, allegation in respect to offences made punishable under Sections 454, 457, 380 read with Section 114 of the Indian Penal Code are made. Apart from the said three cases, the sponsoring authority has recorded statement of two witnesses on assurance of anonymity on 27-9-1998 and 28-9-1998. The first witness in his statement has narrated in respect to incident dated 14-7-1998 alleging that when the witness was passing through Surat City around 10.00 a.m., the petitioner alongwith his accomplice assaulted the witness having harboured the belief that witness has been police informant and supplying the information about the petitioner to the police. The witness was belabored by the petitioner and his accomplice giving fist blows and kicks and as alarm was raised by the witness, the passers-by gathered there and made an attempt to save the witness, however, the petitioner and his accomplice rushed to the mob of people with open knife and razor, whereby the people who gathered started running helter-skelter and dispersed.

The second witness in his statement has narrated in respect to the incident dated 28-8-1998 wherein it is alleged that when witness was passing through the city area on his vehicle, the petitioner and his accomplice stopped the witness and asked him to transport some stolen goods. On refusal by the witness, the petitioner got enraged and assaulted the witness. The witness

having raised alarm, passers-by gathered there, however, the petitioner and his accomplice having rushed to the mob of people with open knife, the people started running helter-skelter and dispersed.

4. That on the basis of the first information report lodged on 8-8-1998 vide CR no.420/98, on 21-8-1998 vide CR no.422/98 and on 3-9-1998 vide CR no.408/98 as well as on the basis of information supplied by the above stated two witnesses who have requested the authority to keep their name and address secret, the respondent no.2-Police Commissioner, Surat as detaining authority has arrived at the conclusion that the petitioner is a " dangerous person" within the meaning of Sec.2(c) of "PASA". That his nefarious criminal activities are and is likely to prejudicially affect the maintenance of public order and as the witnesses have shown fear, it is necessary to claim privilege under Sec.9(2) of "PASA" in regard to disclosure of name and identity of said witnesses. That resort to general provisions of law is not sufficient to prevent the petitioner from continuing his antisocial activity, and as such, impugned order has been passed.

5. On behalf of the petitioner, the impugned order is assailed on the ground that considering the dates of incidents in respect to registered offences as well as unregistered cases, all the incidents are of August and September, 1998. That apart from that there is nothing in the grounds of detention to show that alleged criminal activity of the petitioner has continued till 10th November, 1998 when the impugned order is passed. Relying on the observation made by the apex Court in various authorities, it has been submitted that live link between the alleged criminal activity of the petitioner and the action taken against the petitioner by passing impugned order having been snapped, the subjective satisfaction reached by the detaining authority cannot be said to be based on true or proper application of mind and the same is vitiated, and as such, the order is bad in law.

6. As against that, learned A.G.P. Mr. Samir Dave, has vehemently urged that when the offences are under investigation, it is difficult for the sponsoring authority to collect the details of the incidents, process them and place before the detaining authority without following a time consuming procedure, and as such, lapse of two months in between the last date of incident and passing of impugned order cannot be said to be an inordinate delay. That to support the submissions, Shri Dave has relied upon the observations made by this

Court in the matters of (1) OSMAN ALI KHATAKI VS. COMMISSIONER OF POLICE, RAJKOT AND ORS. (1994(1) G.L.H. 512), (2) BHARATKUMAR MANILAL PAREKH VS. UNION OF INDIA AND ORS. (1992(1) G.L.H. 541) and (3) PRADEEP NILKANTH PATURKAR VS. S RAMAMURTHI AND ORS. (AIR 1994 SC 656).

7. On perusal of the authorities cited at the Bar on behalf of the respondents, it is difficult to uphold the submission urged on behalf of the respondents as in all the three matters, the proposition elucidated is to the extent that time lag between the live link of alleged prejudicial activity of the detenu and the date of action taken by passing the impugned order has to be construed in the context of facts and surrounding circumstances involved in each case. That there is no hard and fast rule providing guidelines to decide whether time lag amounts to inordinate delay or an usual procedural delay. However, in all the three authorities, the proposition has been reiterated that before exercising the power conferred vide Sec.3(1) of "PASA", the detaining authority has to reach the subjective satisfaction not only in respect to alleged prejudicial activities of the petitioner which is likely to adversely affect the maintenance of public order, but has also to be satisfied that there is no inordinate delay in sponsoring the proposal for exercise of the said power.

8. In the instant case, the grounds of detention as supplied to the petitioner are devoid of any material to show that there was no delay in exercising the power on the basis of material which disclose the incidents earlier to two months from the date of passing of the order. Not only that but despite service of rule also no efforts have been made on behalf of the respondents to place on record any affidavit so as to explain the delay, and as such, I am constrained to hold that the live link between the alleged criminal activities of the petitioner as enumerated in the grounds of detention and the date on which action is taken by passing the impugned order having been snapped on account of inordinate delay, the impugned order is vitiated and is bad in law.

9. On the basis of the aforesaid discussion, the petition is allowed. The impugned order dated 10-11-1998 passed by the respondent no.2-Police Commissioner, Surat against the petitioner is hereby quashed and set aside. The petitioner-detenu-Shaikh Raheman Shaikh Karim is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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